

No. 06-3110

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

SEP 27 2006

MAURICE JOUETT,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

LEONARD GREEN, Clerk

ORDER

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Maurice Jouett appeals a district court opinion and order denying a motion to vacate his sentence filed pursuant to 28 U.S.C. § 2255. Jouett's notice of appeal has been construed as an application for a certificate of appealability (COA) under Fed. R. App. P. 22(b). He has also filed a motion to proceed in forma pauperis on appeal.

In 2003, a jury convicted Jouett of possessing with intent to distribute more than 50 grams of cocaine base in violation of 21 U.S.C. § 841(a)(1), possessing a firearm as a convicted felon in violation of 18 U.S.C. § 922(g)(1), and carrying a firearm during or in relation to a drug-trafficking offense in violation of 18 U.S.C. § 924(c)(1). The district court sentenced him to a total of 228 months of imprisonment. A panel of this court affirmed Jouett's convictions and sentence on appeal. *United States v. Jouett*, 87 F. App'x 539 (6th Cir. 2004).

In 2005, Jouett filed a § 2255 motion, arguing that: 1) the trial court committed reversible error when it permitted the jury to see him in handcuffs; 2) trial counsel rendered ineffective assistance by not moving to exclude the playing of an audio-taped conversation between him and a confidential informant; 3) the jury never found him guilty of possessing "crack" (as opposed to

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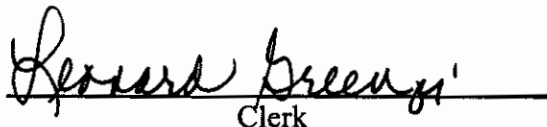
- 2 -

cocaine base); and 4) his sentence was illegally enhanced based on prior convictions not considered by the jury. Upon review, the district court concluded that Jouett had procedurally defaulted his first and third claims, and that Jouett had not established that counsel rendered ineffective assistance. Hence, it denied the motion.

Upon consideration, Jouett is not entitled to a certificate of appealability because the district court's decision is not debatable among jurists of reason. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Jouett is barred from seeking review of his first and third grounds for relief because he has not shown cause and prejudice to excuse his failure to present them on direct appeal, *see Bousley v. United States*, 523 U.S. 614, 622-23 (1998), nor has he presented any evidence of his actual innocence. *See id.* Second, for the reasons stated by the district court, Jouett has not made a substantial showing that counsel's performance prejudiced his defense. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). Finally, to the extent that Jouett raises a sentencing claim pursuant to *United States v. Booker*, 543 U.S. 220 (2005), he is not entitled to relief because the Supreme Court has not made its holding in *Booker* retroactive to cases on collateral review. *See Humphress v. United States*, 398 F.3d 855, 860-61 (6th Cir.) (holding *Booker* not retroactively applicable to cases on collateral review in case involving a first § 2255 motion), *cert. denied*, 126 S. Ct. 199 (2005).

Accordingly, the application for a certificate of appealability is denied and the motion to proceed in forma pauperis is denied as moot.

ENTERED BY ORDER OF THE COURT


Clerk

Mr. James Bonini, Clerk
Southern District of Ohio at Cincinnati
100 E. Fifth Street
Suite 103 Potter Stewart U.S. Courthouse
Cincinnati, OH 45202

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

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LEONARD GREEN
CLERK

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SEP 28 2006

LEONARD GREEN, Clerk

Filed: September 27, 2006

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RE: 06-3110
Jouett vs. USA
District Court No. 05-00324

Enclosed is a copy of an order which was entered today in the above-styled case.

Very truly yours,
Leonard Green, Clerk


(Ms.) Michelle M. Davis
Case Manager

Enclosure

cc:

Honorable S. Arthur Spiegel
Mr. James Bonini